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In The

Supreme Court of the United States

October Term, 1950

No. 645

WILLIAM E. LEAHY, as Executor, Estate of Annie A. Kilroy, Deceased, *Petitioner*

v.

ROSE KALB, *Respondent*

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI

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IN THE

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No. 646

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v.

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BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI

I

THE FACTS OF THE CASE

The material facts are concisely, but completely, stated in the opinion of the Court of Appeals, on Pages 9 and 10 of the record.

II

THE APPLICABLE RULE OF THIS COURT

This Court's Rule 38, Paragraph 5 (b) and (c), indicates that review on certiorari will be considered:

(b) "Where a circuit court of appeals has rendered a decision in conflict with the decision of another circuit court of appeals on the same matter—."

(c) "Where the United States Court of Appeals for the District of Columbia has decided a question of general importance—."

III

A. PROPOSITION OF LAW ASSERTED BY PETITIONER AS TO CONFLICT BETWEEN THE DECISION BELOW AND THOSE OF OTHER CIRCUITS

Petitioner asserts that the decision below is in conflict with the decisions in the cases of *The Fred Smartley, Jr.* v. *Pennsylvania Sugar Co.*, 108 F. (2d) 603, *Joanna Cotton Mills Co.* v. *National Labor Relations Board*, 176 F. (2d) 749, and *United States* v. *Union Planters National Bank and Trust Co.*, 175 F. (2d) 684.

Apart from the question of whether such decisions relate to the "same matter" as required by Rule 38, 5 (b) of this Court, the respondent does not agree with petitioner's assertion that such a conflict exists. Rather, the respondent contends that the three cited cases relied upon by the petitioner are distinguishable from the case at bar on a fundamental principle of law. This distinction was pointed out by the Court in the *Fred Smartley, Jr.* case, wherein it stated as follows:

> "The question presented is whether a statute limiting generally the time for assertion of rights is to be applied to rights existing at the time of its enactment. In answering this question, distinction must be made between cases where there was already a statute of limitations in existence at that time and cases where there was no such statute, as this is a vital matter to be considered in determining the legislative intent. Compare Sohn v. Watterson, 84 U. S. 596, 21 L. Ed. 737, with United States v. St. Louis etc. R. Co., 270 U. S. 1, 46 S. Ct. 182, 70 L. Ed. 435." (108 F. (2d) 607).

In this connection also, the Court observed that prior to the statute of 1936, which was the enactment being construed therein, "There was no time limit for filing

the petition for limitation of liability." (108 F. (2d) 607).

The *Fred Smartley, Jr.* decision is therefore readily distinguishable from the case at bar, since in the latter case there was a statute in existence limiting the time for the assertion of various rights when the Act of June 24, 1949 (Public Law 125, c. 242, 63 Stat. 240) was approved.

Similarly, it appears that the limitation statute construed in the *Union Planters National Bank* case, supra, was not an amendment of an existing time limitation, but rather, imposed such a limitation for the first time. Such a contention is borne out by the quotation from the House Committee Report relating to this statute, which is contained in Footnote 2 of the opinion, a portion of which states as follows:

> "No termination of the liability of endorsers, banks, and others now exists with respect to endorsements of such checks and warrants." (175 F. (2d) 685, F. N. 2).

Also, it appears that the "six months" time limitation provision construed in the *Joanna Cotton Mills Co.* case was likewise not an amendment of an existing time limitation provision.

In the three cases cited by the petitioner as being in conflict with the decision below, the question of whether or not a statute was being applied retroactively was not in issue because the time limitations imposed were not amending existing limitation statutes. In contrast, however, in the case at bar, that was one of the important issues for decision, since the Act of June 24, 1949, amended an existing limitation period under which certain rights had been conferred upon the respondent. In this connection, it was stated in the opinion of the Court below as follows:

"The question is simply whether Congress intended the amendment to apply to claims then existing against estates under administration when Congress intervened." (R. 11)

B. THE STATUTE CONSTRUED BELOW IS LIMITED TO THE FIELD OF PROBATE LAW IN THE DISTRICT OF COLUMBIA

The question at issue in the case at bar arises out of a change made in the probate law of the District of Columbia. The title of the Act of June 24, 1949, is descriptive of its scope, and in this respect, it states, in part, that it is to amend specified sections of the District of Columbia Code, "to provide that estates of decedents being administered within the probate court" may be settled within six months after qualification of the personal representative at his election.

It may be observed therefore that the statute applies only to the District of Columbia, and moreover, is confined even then, to the field of probate law which is inherently "local" in nature. In addition, the decision below would seem to be further limited in that it is applicable only in relation "to claims then existing against estates under administration when Congress intervened." (R. 11).

IV

RESPONDENT'S CAUSE OF ACTION ACCRUED ON SEPTEMBER 19, 1948

The Court below held that the cause of action arose on September 19, 1948, the date of decedent's death, which was several months prior to the amending Act of June 24, 1949. In arriving at its conclusion on this aspect of the case, the Court reviewed its prior rulings on the point, contained in the cases of *West* v. *Baudit,* 59 App. D. C. 74, 75, 33 F. (2d) 370, 371 (1929); *Tuohy* v. *Trail,* 19 App. D. C. 79, 88 (1901), and *Clawans* v. *Sheetz,* 67 App. D. C. 366, 92 F. (2d) 517 (1937), (R. 10).

It is submitted that the decision of the Court below holding that "the cause of action arose upon the death of the decedent on September 19, 1948" is based on sound reasoning, and gives full effect to these prior decisions.

Respondent contends that the date of the accrual of her cause of action is the foundation from which all of her rights are determined and measured in this action.

V

SECTION 518, TITLE 18, D. C. CODE, 1940 EDITION, IS A SPECIAL LIMITATION STATUTE QUALIFYING A GIVEN RIGHT

Section 518, Title 18, D. C. Code, 1940 Edition (31 Stat. 1245, Ch. 854, Sec. 348), which was in effect at the time appellant's cause of action accrued, outlines various rights of claimants and duties of the estate's representative in addition to limiting the time within which suit may be brought on rejected claims. It authorizes the executor to retain assets proportional to the amount of a claim exhibited against him; to pay dividends after the limitation period has expired in the event suit is not brought, in the same manner as though he did not have notice of the claim, and directs the manner of distribution and payment where suit is filed and the claim is ascertained by verdict or otherwise.

As a consequence, respondent contends that Section 518, Title 18, as it existed at the time her cause of action accrued, conferred valuable rights in addition to limiting the time for filing suit. Accordingly, it is her position that Section 518, Title 18, is a "special" statute of limitation as distinguished from a so-called "pure" limitation statute. A discussion of the distinction recognized as between pure limitation statutes and special statutory limitations which qualify given rights is set forth in *Secrest* v. *Galloway Company,* 239 Ia. 168, 30 N. W. (2d) 793, 796 (1948).

It may be observed also that Section 518, Title 18, was characterized as a special statute of limitation by the Court below in *Clawans* v. *Sheetz,* 67 App. D. C. 366, 367, 368, 92 F. (2d) 517, 518, 519, Footnote 1. The construction placed upon Section 518 in that case is in accord with the decision below for it recognizes that Section 518 is a special statute of limitation. In this connection the Court observed that "if a claimant desires the executor to hold assets for his claim he must follow this special procedure." (R. 9).

VI

THE GENERAL RULE IS THAT A STATUTE WILL NOT BE APPLIED RETROACTIVELY

Respondent contends that the construction placed upon the Act of June 24, 1949, by the Court below is consistent with the general rule that a statute should never be given a retroactive effect unless such construction is required by explicit language or by necessary implication. In the case of *United States* v. *St. Louis, etc. R. Co.,* 270 U. S. 1, 46 S. Ct. 182, 70 L. Ed. 435, this Court reaffirmed that general rule and stated that it has been applied to statutes governing procedure, citing *United States Fidelity & Guaranty Co.* v. *United States,* 209 U. S. 306, 28 S. Ct. 537, 52 L. Ed. 805; this Court then went on to say in construing a provision of Chapter 91 of the Transportation Act of 1920 as follows:

> "There is nothing the language of Paragraph 3 of Section 16, or in any other provision of the Act, or in its history, which requires us to hold that the three year limitation applies, under any circumstances to causes of action existing at the date of the act." (70 L. E. 437).

The *St. Louis Railway Company* and the *United States Fidelity and Guaranty Company* cases, supra, were relied upon by the Court below in support of its position against

a retroactive application of the amending Act of June 24, 1949. In this connection, the Court observed that "preference should be given . . . to a construction which precludes application of the particular amendment to claims against estates in process of administration at the time of its enactment." (R. 13). The Court below also observed that to apply the several sections of the amending Act of June 24, 1949, "to estates already in the process of administration would be giving a retroactive effect—the shortening of periods which had begun to run—not required by 'explicit language or by necessary implication.' ". (R. 12).

VII

THE DECISION OF THE COURT BELOW IS CONSISTENT WITH DECISIONS IN OTHER JURISDICTIONS ON THIS ISSUE

In the case of *Hathaway, et al.* v. *Merchants Loan and Trust Company*, 218 Ill. 580, 75 N. E. 1060 (1905), which involved an issue similar to that in the case at bar, the Court observed that the amending statute "is generally deemed to apply merely to causes of action arising subsequent to its enactment, and the presumption is against any intent on the part of the Legislature to make the statute retroactive." (75 N. E. 1061).

Similar holdings were reached in the cases of *Paschall* v. *Reed*, 320 Ill. App. 390, 51 N. E. (2d) 342 (1943); *Mott* v. *Fulton*, 131 Ohio St. 500, 3 N. E. (2d) 404 (1936); *In re Hall's Estate*, 223 Ia. 1148, 11 N. W. (2d) 379 (1943); *Alamo Development Corporation* v. *Thomas*, 186 Tenn. 631, 212 S. W. (2d) 606 (1948); and in connection with a "pure" statute of limitation in relation to an estate problem, in the case of *Ferguson* v. *Ferguson*, 169 Va. 77, 192 S. E. 774 (1937). In this latter case the court stated that the amending act "is held to apply to all rights or causes of action after its passage, leaving all rights or causes of action existing at the time of such passage subject to the operation of prior limitations". (192 S. E. 777).

An authoritative comment on the issue presented is set forth in the annotation appearing at 117 A. L. R. 1208, stating as follows:

> "It has been held that where an estate is in the process of administration, any amendment of the statute of non-claim shortening the time for presentment or proof of claims will not affect the time for proof of claims against such estate unless it expressly provides that it is to operate retroactively." (citing cases) (Page 1209).

Finally, we take language from the case of *O'Malley* v. *Sims*, 51 Ariz. 155, 75 P. (2d) 50 (1938), concerning a preference as to statutes of limitation, which in the circumstances, respondent believes is applicable to her case. The language reads as follows:

> "We have repeatedly held that while the defense of the statute of limitations is a legitimate one, it is not favored by the courts, and, where two constructions are possible, the one which gives the longer period of limitations is the one which is to be preferred." (Pages 54, 55).

VIII

CONCLUSION

The question involved in the decision of the Court below is local in nature, and is not in conflict with the decisions in the cases relied upon by the petitioner. Moreover, the court below plainly gave proper effect to the applicable decisions of this Court. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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Washington, D. C.,
April, 1951